REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

RAEKEN MARKETING CO., INC.,
Petitioner,

CTA Case No. 8759

- versus-

Members:

Castañeda, Jr., *Chairperson*
Casanova, and
Cotangco-Manalastas, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
AUG 18 2015 9:40 Am

x- x

RESOLUTION

COTANGCO-MANALASTAS, *J.*:

For resolution is respondent's *Motion for Reconsideration* filed on July 7, 2015 with petitioner's *Opposition (To Respondent's Motion for Reconsideration)* filed on July 28, 2015.

Respondent seeks reconsideration of this Court's Decision, promulgated on June 24, 2015, the dispositive portion of which reads:

> "**WHEREFORE**, the instant Petition for Review is hereby **GRANTED**. Accordingly, the Final Assessment Notice dated June 15, 2012 for taxable year 2007 and the Warrant of Distraint and/or Levy No. 11-1518-13 dated December 12, 2013 are **CANCELLED** and **WITHDRAWN** for being null and void.
>
> **SO ORDERED.**"

Respondent argues that the Court erred in ruling that respondent failed to show proof that the Final Assessment

Notice (FAN) and Assessment Notices on Value-Added Tax and Income Tax were duly received by petitioner.

Respondent contends that the FAN (Exhibit R-11) and Assessment Notices on Value-Added Tax (Exhibit R-10) and Income Tax (Exhibit R-9) were duly received by petitioner when the same were sent through registered mail at petitioner's registered address as evidence by the Registry Return Card (Exhibit R-11-b). Hence, the presumption of receipt takes effect.

A scrutiny of the Registry Return Receipt would show that the same was received by the authorized representative of petitioner. Respondent stresses that petitioner never denied the authority of the person who received the FAN and Assessment Notices during petitioner's presentation of evidence. Hence, the denial made by the president as to the non-receipt of the FAN and Assessment Notices is baseless and is contrary to the evidence presented.

Citing Sections 3.1.4[1] and 3.1.7[2] of Revenue Regulation No. 12-99, respondent argues that the FAN and Assessment Notices may be sent through registered mail and should petitioner fail to respond within the prescribed period, the same shall be considered actually and constructively received by petitioner.

In this case, petitioner failed to respond to the FAN and Assessment Notices despite receipt thereof, hence, the same became final, executory and demandable.

In its opposition, petitioner stresses that it vehemently and absolutely denied ever receiving such notices from respondent during the trial of the case. Respondent

[1] 3.1.4 *Formal Letter of Demand and Assessment Notice.* — The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. The letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, *otherwise, the formal letter of demand and assessment notice shall be void* (see illustration in ANNEX B hereof). The same shall be sent to the taxpayer only by registered mail or by personal delivery. If sent by personal delivery, the taxpayer or his duly authorized representative shall acknowledge receipt thereof in the duplicate copy of the letter of demand, showing the following: (a) His name; (b) signature; (c) designation and authority to act for and in behalf of the taxpayer, if acknowledged received by a person other than the taxpayer himself; and (d) date of receipt thereof.

[2] 3.1.7 *Constructive Service.* — If the notice to the taxpayer herein required is served by registered mail, and no response is received from the taxpayer within the prescribed period from date of the posting thereof in the mail, the same shall be considered actually or constructively received by the taxpayer. If the same is personally served on the taxpayer or his duly authorized representative who, however, refused to acknowledge receipt thereof, the same shall be constructively served on the taxpayer.xxx

conveniently refused and/or failed to even identify the person who allegedly received such notices during the trial of the case. Petitioner has no idea who this unknown person is. It could neither confirm nor deny the alleged authority of this unknown person.

The ground (presumption of receipt) relied upon by respondent is not applicable. The alleged mailing of these notices by respondent created only a disputable presumption of law which may be rebutted or disproved. Such disputable presumption is satisfactory only if uncontradicted.

Given the direct denials of petitioner, the burden of proof shifted to respondent to prove the alleged mailed notices were received by petitioner. However, respondent merely presented the alleged registry return cards of these notices during the trial of the case without bothering to present the registry receipts and witnesses to testify to the actual fact of its mailing.

A perusal of respondent's motion shows that the arguments raised therein had already been fully addressed and discussed at length by the Court in the assailed Decision. There being no new matters or issues raised, the Court finds no compelling reason to reverse or modify the assailed Decision.

WHEREFORE, premises considered, the instant Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

WE CONCUR:

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

CAESAR A. CASANOVA
Associate Justice